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08 MAR 18 AM 11:46

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RE

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DEPUTY

6 Attorneys for Defendants
7 Chase Home Finance, LLC (on behalf of itself and as successor
in interest to Chase Manhattan Mortgage Corporation) and
8 James Boudreau

9
10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CHRISTOPHER CLARK and JAMES
13 RENICK, individuals,

14 Plaintiffs,

15 v.

16 CHASE HOME FINANCE, LLC; a Delaware
17 LLC doing business in California; CHASE
MANHATTAN MORTGAGE
18 CORPORATION, a New Jersey corporation
doing business in California; JAMES
BOUDREAU, an individual; and DOES 1-25,

19 Defendants.

Case No. 08 CV 0500 JM RBB

NOTICE OF REMOVAL BY
DEFENDANTS CHASE HOME
FINANCE, LLC, CHASE
MANHATTAN MORTGAGE
CORPORATION AND JAMES
BOUDREAU

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1 To the Clerk of Court, Plaintiffs Christopher Clark ("Clark") and James Renick .
 2 ("Renick") (collectively, "Plaintiffs"), and their attorneys of record:

3 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. section 1441 *et seq.*, defendants
 4 Chase Home Finance, LLC ("Chase") (on behalf of itself and as successor in interest to Chase
 5 Manhattan Mortgage Corporation ("Chase Mortgage")) and James Boudreau ("Boudreau")
 6 (collectively, "Defendants") hereby remove this action from the Superior Court of California for
 7 the County of San Diego to this Court, based on the following facts:

8 **PROCEEDINGS TO DATE**

9 1. On December 14, 2007, a civil action was commenced in the Superior Court of
 10 California for the County of San Diego entitled "Christopher Clark, an individual, Plaintiff, vs.
 11 Chase Home Finance, LLC; James Boudreau, an individual; and Does 1 through 25, Defendants,"
 12 No. 37-2007-00083776-CU-OE-CTL (the "Action"). Attached as Exhibit A to this notice is a
 13 true copy of the original Complaint and Summons. On February 14, 2008, a First Amended
 14 Complaint ("FAC") was filed, adding Renick as a Plaintiff and Chase Manhattan as a Defendant.
 15 A true copy of the FAC is attached to this notice as Exhibit B. The allegations of the FAC in the
 16 Action are incorporated by reference in this notice without necessarily admitting any of them.

17 2. Plaintiffs did not complete service on Defendants of their original Complaint. *See*
 18 Declaration of Erin M. Connell In Support Of Defendants' Notice Of Removal ("Connell Decl."),
 19 ¶ 2. Service of the FAC on Chase was completed on March 11, 2008. *See* Connell Decl., ¶ 3 &
 20 Ex. A. Thus, this notice is timely as it is filed within thirty (30) days of service on a defendant of
 21 a copy of the FAC in this matter. 28 U.S.C. § 1446(b); *Murphy Brothers, Inc. v. Michetti Pipe*
 22 *Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-day period for removal runs from the date that
 23 service is completed as required by state law).

24 3. Defendants are informed and believe and on that basis allege that there have been
 25 no other named defendants in this case and that no other defendant, whether named or not, has
 26 been served with or otherwise received the FAC in the Action.

27 **DIVERSITY JURISDICTION**

28 4. This Court has original jurisdiction over this civil action pursuant to 28 U.S.C.

1 § 1332, as (i) Defendants Chase and Chase Manhattan are citizens of different states than
 2 Plaintiffs, (ii) Defendant Boudreau is a “sham” defendant and therefore his citizenship may be
 3 disregarded for purposes of establishing diversity, and (iii) Defendants are informed and believe,
 4 and therefore allege, that the amount in controversy exceeds the sum of \$75,000, exclusive of
 5 interest and costs. Therefore, this action is removable pursuant to 28 U.S.C. § 1441(a).

GROUND FOR REMOVAL

7 5. This action is a civil action between citizens of different states, for purposes of 28
 8 U.S.C. § 1332(a)(1), because Plaintiffs and Chase and Chase Manhattan are of diverse
 9 citizenship, and because Boudreau is a “sham” defendant.

- 10 a. **Clark’s Citizenship.** Clark alleges that at all relevant times, he was a
 resident of California. FAC, ¶ 2. Additionally, Clark was a United States
 citizen during his employment with Chase, and Defendants are informed
 and believe that he continues to be a United States citizen. *See Declaration*
 of Helen DuBowy In Support Of Defendants’ Notice Of Removal
 (“DuBowy Decl.”), ¶ 4. Defendants are also informed and believe that
 Clark continues to reside in California. *See Connell Decl.*, ¶ 4.
 Accordingly, Clark is a citizen of California. *See Kanter v. Warner-*
 Lambert Co., (9th Cir. 2001) 265 F.3d 853, 857 (to be a citizen of a state, a
 person must be a United States citizen and be domiciled in that state,
 meaning the person resides in that state with the intention to remain).
- 11 b. **Renick’s Citizenship.** Renick alleges that at all relevant times, he was a
 resident of California. FAC, ¶ 3. Additionally, Renick was a United States
 citizen during his employment with Chase, and Defendants are informed
 and believe that he continues to be a United States citizen. *See DuBowy*
 Decl., ¶ 5. Defendants are also informed and believe that Renick continues
 to reside in California. *See Connell Decl.*, ¶ 5. Accordingly, Renick is a
 citizen of California. *See Kanter v. Warner-Lambert Co.*, 265 F.3d at 857.
- 12 c. **Chase’s and Chase Manhattan’s Citizenship.** Pursuant to 28 U.S.C.

1 section 1332(c), “a corporation shall be deemed to be a citizen of any State
 2 by which it has been incorporated and of the State where it has its principal
 3 place of business.” Here, Chase Manhattan ceased to exist as a corporate
 4 entity on or around November 15, 2004. DuBowy Decl., ¶ 2. During its
 5 existence, however, Chase Manhattan was incorporated under the laws of
 6 New Jersey with its principal place of business in New Jersey. *See*
 7 DuBowy Decl., ¶ 2. Chase Manhattan’s successor in interest is Chase
 8 Home Finance, LLC (*i.e.*, Defendant Chase in this case). DuBowy Decl., ¶
 9 2. Chase is now, and ever since this action commenced has been,
 10 incorporated under the laws of Delaware with its principal place of
 11 business in New Jersey. *See* DuBowy Decl., ¶ 3. Chase conducts business
 12 in many states, does not conduct a majority of its activities in any single
 13 state, and its corporate headquarters is located in New Jersey. *See*
 14 *Industrial Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1093 (9th Cir.
 15 1990) (where corporation conducts business in many states and does not
 16 conduct majority of its business in any single state, state of corporate
 17 headquarters is the corporation’s principal place of business); DuBowy
 18 Decl., ¶ 3.

19 d. **Boudreau’s Citizenship.** Boudreau is a citizen of California. *See*
 20 Declaration of James Boudreau (“Boudreau Decl.”) at ¶ 2. A non-diverse
 21 defendant may be disregarded, however, for purposes of determining
 22 diversity of citizenship if the plaintiff’s joinder of the non-diverse
 23 defendant is fraudulent or a “sham” so that no possible cause of action has
 24 been stated against that party. *Morris v. Princess Cruises, Inc.*, 236 F.3d
 25 1061, 1067 (9th Cir. 2001) (“Joinder of a non-diverse defendant is deemed
 26 fraudulent, and the defendant’s presence in the lawsuit is ignored for
 27 purposes of determining diversity, ‘if the plaintiff fails to state a cause of
 28 action against a resident defendant, and the failure is obvious according to

1 the settled rules of the state'"); *Triggs v. John Crump Toyota, Inc.*, 154
 2 F.3d 1284, 1287 (11th Cir. 1998) ("Fraudulent [sham] joinder is a
 3 judicially created doctrine that provides an exception to the requirement of
 4 complete diversity"). As set forth in ¶¶ 6-12, *infra*, defendant James
 5 Boudreau is a "sham" defendant, and therefore his citizenship may be
 6 disregarded.

7 d. **Doe Defendants.** Pursuant to 28 U.S.C. section 1441(a), the citizenship of
 8 fictitious defendants is disregarded for purposes of establishing removal
 9 jurisdiction under 28 U.S.C. section 1332; *see also Bryant v. Ford Motor*
 10 *Co.*, 886 F.2d 1526 (9th Cir. 1989), *cert. denied*, 493 U.S. 1076 (1990).

11 6. **James Boudreau Is A "Sham" Defendant And Should Be Disregarded For**
 12 **Purposes Of Determining Diversity Jurisdiction.** Plaintiffs have alleged six separate causes of
 13 action against Defendants: (1) Failure to Pay Overtime [Lab. C. §§ 510, 1194, 1198], (2) Waiting
 14 Time Penalties [Lab. C. §§ 203, 558], (3) Failure to Provide Accurate Itemized Statements [Lab.
 15 C. § 226], (4) Failure to Provide Rest Periods [Lab. C. §§ 226.7 and IWC Wage Orders], (5)
 16 Unfair Competition [B&PC § 17200 – *et seq*], and (6) Failure to Pay Overtime and Provide
 17 Itemized Wage Statements [Labor Code § 2699]. *See* FAC. Yet because there is absolutely no
 18 possibility that Plaintiffs can sustain any of their six claims against Boudreau, and because the
 19 claims fail under settled California law, the Court should disregard his citizenship for purposes of
 20 determining diversity of citizenship. *See Morris v. Princess Cruises, Inc.*, 236 F.3d at 1067;
 21 *Triggs v. John Crump Toyota, Inc.*, 154 F.3d at 1287. The Court may consider declarations or
 22 other summary judgment-type evidence on the issue of whether a particular defendant's joinder is
 23 a "sham." *West America Corp. v. Vaughan Bassett Furniture*, 765 F.2d 932, 936 fn. 6 (9th Cir.
 24 1985); *Cavallini v. State Farm Mut. Ins. Co.*, 44 F.3d 256, 263 (5th Cir. 1995).

25 7. **Plaintiffs Cannot Sustain Their Wage Claims Against Boudreau.** Plaintiffs
 26 allege that "Defendant BOUDREAU is one of the managers of the entity Defendant, and was one
 27 of each of Plaintiff's employers for purposes of the Labor Code violations alleged herein, in that
 28 said Defendant exercised direct control over wages, hours and working conditions of each

1 Plaintiff; he failed and refused to pay, among other things, overtime compensation; he paid each
 2 Plaintiff without accurate itemized wage statements; and he failed to authorize and/or permit rest
 3 periods pursuant to Labor Code § 226.7 and all IWC Wage Orders applicable to Plaintiff's [sic]
 4 industry and occupation." FAC, ¶ 6. Plaintiffs further allege that Boudreau was an "individual
 5 person who owned, controlled, or managed the business for which each Plaintiff worked, and/or
 6 who directly or indirectly exercised operational control over Plaintiff's wages, hours and working
 7 conditions. FAC, ¶ 9. Additionally, Plaintiffs allege that Boudreau "held ownership, officer,
 8 director and/or executive positions with the remaining Defendants, and acted on behalf of the
 9 remaining Defendants, which included decision-making responsibility for, and establishment of,
 10 illegal payroll practices and policies for Defendants which have damaged Plaintiff in individual
 11 and separate amounts." FAC, ¶ 9. Thus, Plaintiffs conclude that Boudreau was and is an
 12 "employer" as a matter of law, and "is individually liable on all causes of action alleged herein."
 13 FAC, ¶ 9.

14 As an initial matter, the undisputed evidence shows that Plaintiffs' allegations about
 15 Boudreau are patently false and unsubstantiated. For instance, Plaintiffs cannot dispute that
 16 Boudreau is not (and never has been) a corporate officer or director of Chase or Chase Manhattan,
 17 and is not (and never has been) a majority shareholder in either Company. *See* Boudreau Decl.,
 18 ¶¶ 3, 7. Further, Boudreau did not have decision-making responsibility for the allegedly illegal
 19 payroll practices and policies about which Plaintiffs complain. *See* Boudreau Decl., ¶ 4.

20 More importantly, however, even if Plaintiffs could substantiate their allegations,
 21 California law is clear that individual officers and directors are not personally liable as
 22 "employers" for wages owed by a corporate entity. *Reynolds v. Berment*, 36 Cal. 4th 1075, 1087-
 23 1088 (2005) ("corporate agents acting within the scope of their agency are not personally liable
 24 for the corporate employer's failure to pay its employees' wages"); *Jones v. Gregory*, 137 Cal.
 25 App. 4th 798, 800 (2006) ("California law does not support imposing personal liability on
 26 corporate officers or agents as 'employers'"). As explained by the California Supreme Court in
 27 *Reynolds*, although the California Industrial Welfare Commission ("IWC") defines "employer" to
 28 mean any person who "employs or exercises control over the wages hours or working conditions

1 of any person" [*Reynolds*, 36 Cal. 4th at 1085, fn. 6], the California Labor Code does not include
 2 such a definition. *Id.* at 1088. "Had the Legislature meant in [Labor Code] section 1194 to
 3 expose to personal civil liability any corporate agent who 'exercises control' over an employee's
 4 wages, hours, or working conditions, it would have manifested its intent more clearly than by
 5 mere silence after the IWC's promulgation of [its] Wage Order[s]." *Id.* at 1088. *Reynolds* also
 6 rejected adoption of the broad definition of "employer" used by federal courts when adjudicating
 7 claims under the Fair Labor Standards Act ("FLSA") because the FLSA specifically defines
 8 "employer" to include "any person acting directly or indirectly in the interest of an employer,"
 9 while the applicable sections of the California Labor Code do not. *Id.* at 1088.

10 Rather, interpretation of the term "employer" as used in the California Labor Code must
 11 be determined by looking to common law, and under common law, "corporate agents acting
 12 within the scope of their agency are not personally liable for the corporate employer's failure to
 13 pay its employees' wages," even when the alleged acts breach an employment contract or breach
 14 a tort duty of care. *Id.* at 1087; *see also Jones*, 137 Cal. App. 4th at 807 (under common law, "a
 15 corporate officer or agent does not employ employees – the corporation does").

16 Here, Plaintiffs allege wage claims against Defendants Chase, Chase Manhattan and
 17 Boudreau. The Labor Code sections cited by Plaintiffs with respect to these wage claims,
 18 however, do not define "employer" to include individuals who exercise control over wages. *See*
 19 Cal. Lab. Code §§ 510, 1194, 1198 [First Cause of Action for "Failure to Pay Overtime"]¹ and §
 20 226.7 [Fourth Cause of Action for "Compensation for Required Rest Periods Not Provided"].
 21 Thus, even if Plaintiffs did have evidence to show that Boudreau exercised control over their

22 ¹ Plaintiffs also cite Labor Code Section 558 in support of their first cause of action for failure to pay overtime. *See*
 23 FAC, ¶¶ 38, 39. Section 558, entitled "civil penalties," states, "[a]ny employer or other person acting on behalf of an
 24 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days
 25 of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty." Cal. Lab. Code
 26 section 558(a). Here, however, although Plaintiffs recognize that Section 558 relates to civil penalties [FAC, ¶ 7],
 27 their first cause of action is for failure to pay overtime under Sections 510, 1194 and 1198 – it is not a claim for civil
 28 penalties under Section 558. *See* FAC, ¶¶ 37-49. Even if Plaintiffs had brought this claim as a claim for civil
 penalties under Section 558, however, it would be time barred as a matter of law. Cal. Civ. Proc. Code § 340(a) (one
 year statute of limitation for claims seeking penalties). Indeed, Clark's employment with Chase ended on July 31,
 2005 [FAC, ¶ 22], and Clark did not file his initial Complaint until December 14, 2007. *See* Complaint; DuBowy
 Decl., ¶ 4. Similarly, Renick's employment with Chase ended on April 4, 2005 [FAC, ¶ 27], and Renick did not file
 his initial Complaint [the FAC] until February 8, 2008. *See* FAC; DuBowy Decl., ¶ 5. Accordingly, Plaintiffs may
 not rely upon Section 558 to save them from removal. Cal. Civ. Proc. Code § 340(a).

1 wages, which they do not, Boudreau nevertheless cannot be individually liable for unpaid wages
 2 under the California Labor Code as a matter of law. *Reynolds*, 36 Cal. 4th at 1087-1088; *Jones*,
 3 137 Cal. App. 4th at 800.

4 **8. Plaintiffs Cannot Sustain Their Statutory Penalty Claims Against Boudreau.**

5 Plaintiffs also allege claims against Boudreau for statutory penalties. Specifically, Plaintiffs
 6 assert against Boudreau their Second Cause of Action for Waiting Time Penalties under Labor
 7 Code section 203 and their Third Cause of Action for Failure to Provide Accurate Itemized
 8 Statements under Labor Code section 226. *See* FAC. As with Plaintiffs' wage claims, the
 9 statutes underlying the penalty claims – Sections 203 and 226 – apply only to employers, and
 10 neither section defines “employer” to include individual officers, directors, agents, or managers.
 11 *See* Cal. Lab. Code §§ 203, 226. Thus, Plaintiffs' statutory penalty claims against Boudreau fail
 12 for the same reasons as their wage claims. *Reynolds*, 36 Cal. 4th at 1087 (in the absence of a
 13 statutory definition of “employer,” courts must look to common law, which does not impose
 14 personal liability on corporate agents); *Jones*, 137 Cal. App. 4th at 805 (“none of the provisions
 15 plaintiffs rely upon refer to the IWC employer definition; hence, there is no reason to suppose the
 16 Legislature intended to alter the common law's rule against personal liability for corporate
 17 agents”).²

18 Further, Plaintiffs' Third Cause of Action against Boudreau fails because it is time barred.
 19 Plaintiffs plainly seek penalties of fifty dollars (\$50) for each alleged initial violation and one
 20 hundred dollars (\$100) for each alleged subsequent violation, up to an aggregate penalty of four
 21 thousand dollars (\$4,000), as redress for the alleged failure to receive accurate itemized wage
 22 statements. FAC, ¶ 61. Accordingly, this claim is subject to a one-year statute of limitations and
 23 is time barred. Cal. Civ. Proc. Code 340(a); FAC ¶¶ 22, 27 (Clark's employment ended in July
 24 2005 and Renick's employment ended in April 2005).³

25 ² Apparently recognizing that the other Labor Code sections cited in their Complaint do not impose liability against
 26 individuals, Plaintiffs once again cite to Section 558 in support of their Second Cause of Action for Waiting Time
 27 Penalties. *See* FAC at p. 10. As explained in Footnote 1, *supra*, however, Plaintiffs do not seek civil penalties in
 connection with their second cause of action, and even if they had, it would be time-barred as a matter of law. Cal.
 Civ. Proc. Code § 340(a) (one year statute of limitations for penalty claims).

28 ³ With respect to Plaintiffs' Second Cause of Action for waiting time penalties, Section 203 explicitly states that
 unlike other penalty claims, waiting time penalties may be sought “at any time before the expiration of the statute of

1 9. **Boudreau Is Not The Alter-Ego Of Chase or Chase Manhattan.** Plaintiffs may
 2 contend that *Reynolds* leaves open the possibility that an individual may be held liable for unpaid
 3 wages of the employer if the individual is found to be the “alter ego” of the employer. *Reynolds*,
 4 36 Cal. 4th at 1088, n. 9 (citing *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523,
 5 538 (2000)). Even if Plaintiffs make such an argument, it will not save their claims against
 6 Boudreau. In California, alter ego “is an extreme remedy, sparingly used.” *Sonora Diamond*
 7 *Corp.*, 83 Cal. App. 4th at 539. As explained in *Sonora Diamond Corp.*,

8 [T]wo conditions must be met before the alter ego doctrine will be invoked. First,
 9 there must be such a unity of interest and ownership between the corporation and
 10 its equitable owner that the separate personalities of the corporation and the
 11 shareholder do not in reality exist. Second, there must be an inequitable result if
 12 the acts in question are treated as those of the corporation alone [citations omitted].
 13 Among the factors to be considered in applying the doctrine are commingling of
 14 funds and other assets of the two entities, the holding out by one entity that it is
 15 liable for the debts of the other, identical equitable ownership in the two entities,
 use of the same offices and employees, and use of one as a mere shell or conduit
 for the affairs of the other [citations omitted]. Other factors which have been
 described in the case law include inadequate capitalization, disregard of corporate
 formalities, lack of segregation or corporate records, and identical directors and
 officers [citations omitted]. No one characteristic governs, but the courts must
 look at all of the circumstances to determine whether the doctrine should be
 applied.

16 *Id.* at 538-539.

17 Here, Plaintiffs allege there exists a “unity of ownership and interest” between Boudreau
 18 and both Chase and Chase Manhattan, such that Boudreau is the “alter ego” of Chase and Chase
 19 Manhattan, such that “the Court’s adherence to the fiction of the separate existence of any or all
 20 Defendants as separate entities distinct from the other Defendants would permit an abuse of
 21 corporate privilege, would sanction fraud and/or promote injustice,” and such that Chase and
 22 Chase Manhattan are mere “shell[s] or sham[s] without the requisite corporate assets.” FAC, ¶¶
 23 13-20. There is simply no support for these allegations.

24 Plaintiffs have no evidence to show any of the relevant alter-ego factors. First, Boudreau
 25 and Chase or Chase Manhattan do not have – and have never had – any commingled funds or
 26 other assets. Boudreau Decl., ¶ 5. Similarly, Boudreau and Chase or Chase Manhattan have
 27 never taken on liability for each other’s debts. Boudreau Decl., ¶ 5. Further, Boudreau is not –

28 limitations on an action for the wages from which the penalties arise.” Cal. Lab. Code § 203.

1 and never has been – the equitable owner of Chase or Chase Manhattan, and although Boudreau
 2 was an employee of Chase and Chase Manhattan, Boudreau himself does not employ – and never
 3 has employed – any of Chase's or Chase Manhattan's employees. Boudreau Decl., ¶¶ 5-6.
 4 Additionally, Chase is not – and Chase Manhattan was not – a mere shell or conduit for the affairs
 5 of the Boudreau, as Boudreau does not own – and never has owned – the majority of either
 6 Company's shares. Boudreau Decl., ¶ 7. Rather, Chase is a fourth level, wholly owned
 7 subsidiary of JPMorgan Chase & Co. (a publicly held company), and Boudreau is not a majority
 8 shareholder of any of Chase's parent companies, either. DuBow Decl., ¶ 3; Boudreau Decl., ¶ 7.
 9 Further, Plaintiffs have no evidence to show inadequate capitalization, disregard of corporate
 10 formalities, lack of segregation of corporate records, or identical officers and directors between
 11 Boudreau and Chase or Chase Manhattan. Indeed, Boudreau as an individual does not have any
 12 officers or directors. Boudreau Decl., ¶ 6. Finally, Plaintiffs simply cannot show that there
 13 would be “an inequitable result if the acts in question are treated as those of the corporation
 14 alone.” *Sonora Diamond Corp.*, 83 Cal. App. 4th at 539.

15 In short, because there is no possibility that Boudreau is the alter ego of Chase or Chase
 16 Manhattan, Plaintiffs' claims against Boudreau unavoidably fail.

17 10. **Plaintiffs Cannot Sustain Their Unfair Competition Claim Against Boudreau.**
 18 California Business & Professions Code §§ 17200 – *et seq.* (“Section 17200”) prohibits acts of
 19 unfair competition, including unlawful and unfair business practices. Cal. Bus. & Prof. Code §
 20 17200. As Plaintiffs appear to recognize, Section 17200 “borrows” violations of other laws and
 21 treats them as independently actionable under Section 17200. *See Farmers Ins. Exch. v. Superior*
 22 *Court*, 2 Cal. 4th 377, 383 (1992). Thus, Section 17200 does not itself establish any substantive,
 23 independent rights. *Lazar v. Hertz Corp.*, 69 Cal. App. 4th 1494, 1505 (1999) (to state a claim
 24 under Section 17200, a plaintiff must state a claim for violation of the underlying statute).
 25 Indeed, California courts specifically recognize that in the wage and hour context, “[i]n the
 26 absence of a valid claim for violation of the prevailing wage law, plaintiffs also cannot
 27 successfully allege unfair business practices or unfair competition under the Business and
 28 Professions Code.” *Violante v. Communities Southwest Dev. & Constr. Co.*, 138 Cal. App. 4th

1 972, 980 (2006).

2 Here, the alleged unlawful acts that make up Plaintiffs' 17200 claim against Boudreau are
 3 the very same alleged Labor Code violations that make up his first four causes of action. *See*
 4 FAC, ¶ 71. Accordingly, because Plaintiffs cannot sustain their Labor Code claims against
 5 Boudreau [*see ¶¶ 6-9, supra*], they also cannot sustain their Fifth Cause of Action under Section
 6 17200. *Lazar v. Hertz Corp.*, 69 Cal. App. 4th at 1505; *People v. Duz-Mor Diagnostic Lab, Inc.*,
 7 68 Cal. App. 4th 654, 673 (1998) ("A defense to the underlying offense is a defense under [§
 8 17200]"); *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163, 173-174 (2000)
 9 (recognizing that a UCL defendant may assert "defenses which might be asserted to a charge of
 10 violation of the statute that underlies a UCL claim").

11 **11. Plaintiffs Cannot Sustain Their Private Attorney General Act Claim Against**
 12 **Boudreau.** Plaintiffs Sixth Cause of Action against Boudreau seeks civil penalties under Labor
 13 Code Section 558 by way of a private right of action under Labor Code Section 2699
 14 (California's Private Attorneys General Act ("PAGA")) for Boudreau's alleged failure to pay
 15 Plaintiffs overtime compensation. FAC, ¶ 36, 78. Additionally, Plaintiffs seek statutory penalties
 16 under Labor Code Section 226 by way of a private right of action under Section 2699 for
 17 Boudreau's alleged failure to provide Plaintiffs with accurate itemized wage statements. FAC,
 18 ¶ 36, 78. Plaintiffs' PAGA claims fail as a matter of law, however, because they undisputedly are
 19 time barred.

20 California law is clear that PAGA claims are subject to a one year statute of limitations.
 21 *See Thomas v. Home Depot USA, Inc.*, No. C06-02705 MJJ , 2007 WL 2854259, at * 3, *4 (N.D.
 22 Cal. Sept. 27, 2007) (PAGA claims for civil penalties are subject to a one-year statute of
 23 limitations under CCP section 340(a)); *Moreno v. Autozone, Inc.*, No. C05-04432 MJJ, 2007 WL
 24 1650942, at *1, *2 (N.D. Cal. June 5, 2007) (same); *DeSimas v. Big Lots Stores, Inc.*, No. C 06-
 25 6614 SI, 2007 WL 686638, at *3 (N.D. Cal. March 2, 2007) (same). Here, Clark's employment
 26 with Chase ended "around" July 15, 2005, and Renick's employment with Chase ended "around"
 27 April 6, 2005. FAC, ¶¶ 22, 27. Further, Plaintiffs did not mail notice of the alleged violations to
 28 Defendants or to the California Labor & Workforce Development Agency (as they are required to

1 do prior to bringing a PAGA claim [see Cal. Lab. Code § 2699.3]) until January 9, 2008, and did
 2 not file a complaint containing a PAGA claim until February 14, 2008. *See Connell Decl.*, ¶¶ 6-
 3 7 & Exs. B & C; FAC. Accordingly, because Plaintiffs did not initiate their PAGA claims within
 4 one year of their terminations, their PAGA claim is time-barred. *See, e.g., Thomas v. Home*
 5 *Depot USA, Inc.*, 2007 WL 2854259, at * 3, *4; Cal. Civ. Proc. Code § 340(a) (one year statute of
 6 limitations for penalties).⁴

7 In short, there is no possibility that Plaintiffs can succeed on their Sixth Cause of Action
 8 against Boudreau.

9 **12. Clark Released His Claims Against Boudreau.** Finally, there is no possibility
 10 that Clark can sustain any of his six claims against Boudreau because Clark undisputedly released
 11 them. *See DuBoway Decl.*, ¶ 4 & Ex. A (Clark Release); *see also* Cal. Civ. Code 1541 (a release
 12 given by consideration extinguishes any obligation covered by its terms); *Botefur v. City of Eagle*
 13 *Point, Or.*, 7 F.3d 152, 156 (9th Cir. 1993) (the enforceability of a settlement agreement is
 14 governed by principles of state contract law). A plain reading of the release signed by Clark
 15 illustrates that he released the claims alleged in his Complaint against both Chase and “all
 16 present, former and future employees, directors, officers, representatives, administrators, agents,
 17 successors, assigns, trustees, heirs, executors and any fiduciaries of any employee benefit plan.”
 18 DuBoway Decl., Ex. A (p. 1). In fact, the release plainly states that “in consideration of severance
 19 under The Severance Pay Plan of JPMorgan Chase & Co., severance-related benefits and career
 20 services,” Clark released any and all “suits, claims, charges, obligations, causes of action or
 21 demands in law or in equity (including any arbitration claims) arising from or relating to [his]

22
 23 ⁴ To the extent that Plaintiffs argue they are not using PAGA to seek penalties under the PAGA statute itself, but
 24 instead are using PAGA to give them a private right of action to seek penalties under Labor Code sections 558 and
 25 226, those underlying Labor Code statutes are also subject to a one-year statute of limitations, and therefore
 26 Plaintiffs’ PAGA claim is time-barred on that ground as well. *See* Cal. Civ. Proc. Code 340(a) (one year statute of
 27 limitations for penalty claims). Similarly, to the extent Plaintiffs claim they have brought their PAGA claim on
 28 behalf of both themselves and other aggrieved employees, this claim also fails to get around the untimeliness of their
 individual claims. *See Thomas v. Home Depot USA, Inc.*, 2007 WL 2854259, at * 5 (rejecting plaintiff’s argument
 that “even if his individual claim is time-barred, he can continue to represent the State of California and all injured
 parties. . .in an action for civil penalties”); *DeSimas v. Big Lots Stores, Inc.*, 2007 WL 686638, at *4 (finding plaintiff
 could not pursue PAGA claims in a representative capacity because the statute of limitations barred plaintiff’s claim).
 Indeed, as held in both *Thomas* and *Big Lots*, to bring a representative PAGA claim, the named plaintiffs must have a
 timely individual claim on which to base their representation. *Id.* Plaintiffs have no such timely claim here.

1 employment relationship with JPMC and/or the termination thereof," including but not limited to
 2 "any employment and/or benefit related claims under any federal, state or local law, employment
 3 law or civil rights law." DuBowy Decl., Ex. A (p. 1). Although the release carves out delineated
 4 exceptions, including claims "under the Fair Labor Standards Act for failure to pay minimum
 5 wages or overtime," the release does not carve out any exceptions for wage or penalty claims
 6 under the California Labor Code, or state law claims for unfair competition or conversion.
 7 DuBowy Decl., Ex. A. Accordingly, Clark's claims against Boudreau fail not only because such
 8 claims are not sustainable against an individual as a matter of law and/or are time barred, but also
 9 because Clark released them.

10 In sum, under settled California law, Plaintiffs cannot possibly sustain any of their claims
 11 against Boudreau. Boudreau therefore is a "sham" defendant, and his citizenship should be
 12 disregarded for purposes of determining diversity of citizenship. *Morris v. Princess Cruises, Inc.*,
 13 236 F.3d at 1067.

14 13. **Amount in Controversy.** This action meets the amount in controversy
 15 requirement of 28 U.S.C. § 1332(b). Clark alleges that "at all times relevant herein, [he] was
 16 entitled to an hourly rate of pay of approximately \$21.35 – \$36.39." FAC, ¶ 23. Clark further
 17 alleges that he "routinely worked in excess of eight (8) hours per day and forty (40) hours per
 18 week, all without receiving proper wages, any overtime or double-time pay." FAC, ¶ 25.
 19 Similarly, Renick alleges that "at all times relevant herein, [he] was entitled to an hourly rate of
 20 pay of approximately \$30.05 – \$32.50." FAC, ¶ 28. Renick further alleges that he "routinely
 21 worked in excess of eight (8) hours per day and forty (40) hours per week, all without receiving
 22 proper wages, any overtime or double-time pay." FAC, ¶ 30. Accordingly, Plaintiffs allege that
 23 they have suffered and continue to suffer "wage losses in a sum according to proof." FAC, ¶¶ 47,
 24 48; Prayer, ¶¶ 1-2. Plaintiffs' also seek statutory penalties under Labor Code sections 203 and
 25 226. FAC, ¶¶ 56, 61. Plaintiffs also seek payments for alleged missed rest periods. FAC, ¶ 63.
 26 Plaintiffs also seek restitution and injunctive relief under Business & Professions Code Section
 27 17200 [FAC, ¶ 73, 74], and civil and statutory penalties under Labor Code Section 2699 [FAC, ¶
 28 78, 80]. Plaintiffs also seek attorney's fees. FAC Prayer, ¶ 7. Requests for attorney's fees must

1 be taken into account in ascertaining the amount in controversy. *See Galt G/S v. JSS*
 2 *Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorney's fees to be
 3 included in amount in controversy, regardless of whether award is discretionary or mandatory).

4 Accordingly, Defendants are informed and believe, and on that basis allege, that it is
 5 apparent from the complaint that Plaintiffs claim damages in an amount in excess of \$75,000.
 6 *See White v. FCI USA Inc.*, 319 F.3d 672, 675 (5th Cir. 2003) (it was facially apparent that
 7 plaintiff's wrongful termination claim exceeded \$75,000 based on her "lengthy list of
 8 compensatory and punitive damages," including lost pay and benefits, impaired earning capacity,
 9 and emotional distress, as well as her claim for attorney's fees). Thus, the amount in controversy
 10 in the Action (exclusive of interest and costs) is in excess of \$75,000.

11 14. Based on the foregoing, this Action is subject to removal to this Court under
 12 U.S.C. sections 1332(a) and 1441(a).

13 VENUE

14 Venue lies in the Southern District of this Court pursuant to 28 U.S.C. sections 1441,
 15 1446(a), 1391(a)(2) and 84(d). This action originally was brought in the Superior Court of the
 16 State of California, County of San Diego, and the events forming the basis of the alleged unlawful
 17 employment practices occurred in the County of San Diego.

18 NOTICE OF REMOVAL

19 15. This Notice of Removal will be promptly served on Plaintiff and filed with the
 20 Clerk of the Superior Court of the State of California in and for the County of San Diego.

21 16. In compliance with 28 U.S.C. section 1446(a), attached are copies of the state-
 22 court papers served herein – the First Amended Complaint and Notice and Acknowledgement of
 23 Receipt (Exhibit B).

24 ///

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27 ///

28 ///

1 WHEREFORE, Defendants pray that this civil action be removed from the Superior Court
2 of the State of California, County of San Diego, to the United States District Court of the
3 Southern District of California, San Diego Division.

4 Dated: March 17, 2008

5 ANDREW R. LIVINGSTON
6 ERIN M. CONNELL
7 ORRICK, HERRINGTON & SUTCLIFFE LLP

8 By: Erin Connell

9 Erin M. Connell
10 Attorneys for Defendants
11 Chase Home Finance, LLC
12 and James Boudreau

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**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CHASE HOME FINANCE, LLC; JAMES BOUDREAU, an individual; and DOES 1-25,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHRISTOPHER CLARK, an individual

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION
SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DEL JUICIO)

Z007 DEC 14 P

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/seithelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/seithelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/seithelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is: Superior Court San Diego County
(El nombre y dirección de la corte es):

Central Division
220 W. Broadway
San Diego, CA 92101-3409

CASE NUMBER:
(Número del Caso)
97-2007-00083778-CU-QE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

United Employee's Law Group, P.C. (562)256-1047
65 Pine Ave # 312

Long Beach, CA 90802
DATE: **DEC 14 2007**
(Fecha)

Clerk, by WYNNE S. ABELLA, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservator)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

4. by personal delivery on (date):

1 UNITED EMPLOYEES LAW GROUP, P.C.
2 Walter L. Haines, Esq. SBN 71075
2 Gregory A. Douglas, Esq. SBN 147166

FILED
CIVIL BUSINESS OFFICE 9
CENTRAL DIVISION

2007 DEC 14 P 3:11

CLERK'S OFFICE, SAN JOSE
SAN JOSE, CALIFORNIA

3 Angie Phung, Esq. SBN 238949
65 Pine Ave., #312
4 Long Beach, CA 90802
Tel: (562) 256-1047
5 Fax: (562) 256-1006

**6 Attorneys for Plaintiff
CHRISTOPHER CLARK**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

11 CHRISTOPHER CLARK, an individual) Case No. 37-2007-00083776-CU-OE-CTL
12 Plaintiff,)
13 vs.)
14)
15 CHASE HOME FINANCE, LLC; JAMES)
16 BOUDREAU, an individual;)
and DOES 1-25,)
17 Defendant(s).)
18)
COMPLAINT FOR DAMAGES, RESTITUTION
AND STATUTORY PENALTIES
1. Failure to Pay Overtime [Lab.C. §§ 510, 1194,
1198]
2. Waiting Time Penalties [Lab.C. §§ 203, 558]
3. Failure to Provide Accurate Itemized
Statements [Lab. Code §226]
4. Failure to Provide Rest Periods
[Lab.C. §§ 226.7 and IWC Wage Orders]
5. Unfair Competition [B&PC § 17200-*et seq.*]
6. Constructive Trust

23 COMES NOW Plaintiff CHRISTOPHER CLARK (hereinafter referred to as "CLARK" or
24 "Plaintiff"), an individual, and complains and alleges against Defendants CHASE HOME FINANCE, LLC,
25 JAMES BOUDREAU, and DOES 1-25, and each of them, for causes of action as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

- 27 1. Plaintiff brings this action against Defendants CHASE HOME FINANCE, LLC, JAMES
28 BOUDREAU, and DOES 1 through 25, inclusive, for statutory damages, injunctive relief, prejudgment

1 interest, costs, attorney's fees, restitution, Labor Code penalties, and other appropriate relief for Defendants'
 2 violations of various sections of the California Labor Code, Industrial Welfare Commission Wage Orders,
 3 and Business & Professions Code §§ 17200-*et seq.* Jurisdiction is proper in this Court because alleged
 4 damages exceed \$25,000.00 and Plaintiff seeks a permanent injunction according to Code of Civil Procedure
 5 § 580(b)(2).

6 2. At all times mentioned herein, Plaintiff CLARK was a resident of SAN DIEGO County, State
 7 of California. CLARK is a former employee of Defendants, and each of them.

8 3. Plaintiff is informed and believes, and on that basis allege, that at all times mentioned herein,
 9 Defendant CHASE HOME FINANCE, LLC (hereinafter referred to as "CHASE" individually, or
 10 collectively as "Defendants") was and is a Delaware corporation doing business in California with its
 11 principal place of business located at 10790 RANCHO BERNARDO ROAD, SAND DIEGO, CA 92127,
 12 in the County of SAN DIEGO, State of California.

13 4. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein,
 14 Defendant JAMES BOUDREAU (hereinafter referred to as "BOUDREAU" individually, or collectively
 15 with other Defendants as "Defendants") was a resident of SAN DIEGO County. Plaintiff is informed and
 16 believes, and thereon alleges, that Defendant BOUDREAU is one of the managers of the entity Defendant,
 17 and was one of Plaintiff's employers for purposes of the Labor Code violations alleged here in that said
 18 Defendant exercised direct control over wages, hours, and working conditions of Plaintiff; he/she failed and
 19 refused to pay, among other things, overtime compensation; he/she paid Plaintiff without accurate itemized
 20 wage statements; and BOUDREAU failed to authorize and/or permit rest periods pursuant to Labor Code
 21 § 226.7 and all IWC Wage Orders applicable to Plaintiff's industry and occupation.

22 5. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, directly
 23 employed or exercised control over Plaintiff's wages, hours, and/or working conditions.

24 6. Plaintiff is informed and believes and thereon alleges, that at all times relevant herein, each and
 25 every Defendant named herein, whether in their individual capacity or as a "Doe" Defendant, was at all times
 26 relevant to Plaintiff's claims herein the agent, employee, servant, master, and/or employer of each and every
 27 other Defendant, however named, and in doing the things herein alleged, were acting within the course and
 28 scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

1 7. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through
2 25, inclusive, and therefore sues said Defendants by such fictitious names and capacities. Plaintiff will
3 amend this complaint to show said Defendants' true names and capacities when they have been ascertained.
4 Plaintiff is informed and believes and thereon allege that at all times relevant, Defendant BOULREAU and
5 each of said fictitiously named DOE defendants, was a business entity or individual person who owned,
6 controlled, or managed the business for which Plaintiff worked, and/or who directly or indirectly exercised
7 operational control over Plaintiff's wages, hours, and working conditions. Plaintiff further alleges that said
8 each and every one of said Defendants held ownership, officer, director and/or executive positions with the
9 remaining Defendants, and acted on behalf of the remaining Defendants, which included decision-making
10 responsibility for, and establishment of, illegal payroll practices and policies for Defendants which have
11 damaged Plaintiff in individual and separate amounts. Thus, all Defendants herein, whether named in this
12 Complaint or named as DOES 1 through 25, were and are "employers" as a matter of law, and each is
13 individually liable on all causes of action alleged herein.

14 8. Plaintiff is informed and believes, and thereon alleges, that each and every Defendant herein is,
15 and at all times relevant hereto was, a person, corporation or other business entity existing and operating
16 within the confines of the State of California, and thus subject to the jurisdiction of the California courts by
17 reason of "minimum contacts" in California, and/or by purposeful availment of the California market for
18 labor of the kind provided by Plaintiff, and did transact and conduct business in the State of California, and
19 are thus subject to the jurisdiction of all laws, regulations and court decisions rendered by the State of
20 California. Specifically, Defendants, and each of them, maintain offices, operate businesses, employ
21 persons, conduct business in, and pay employees by illegal payroll practices and policies in the County of
22 SAN DIEGO.

23 9. Plaintiff is further informed and believes, and thereon alleges, that each and every Defendant
24 herein aided and assisted the other Defendants in committing the wrongful acts alleged herein, and that
25 Plaintiff's damages were proximately caused by each and every Defendant herein.

26 10. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each
27 and every Defendant herein was in some fashion, by contract or otherwise, the successor, assign, joint
28 venturer, co-venturer, indemnitor, guarantor, partner or third-party beneficiary of one or more of the

1 remaining Defendants, and all times relevant to Plaintiff's claim alleged herein, was acting within that
 2 capacity. Plaintiff further alleges that each and every Defendant to some degree and extent wrongfully
 3 received and/or wrongfully benefitted from the flow of assets from the other Defendants, to the detriment
 4 of Plaintiff, and each of them, the rightful owners of the pay denied them, and that such equities exist to
 5 merit this Court imposing restrictive orders, including without limitation a constructive trust on such assets
 6 in the control of Defendants, or any of them, or their agents or anyone acting on their behalf, as Plaintiff may
 7 trace to the wrongful recipient(s) and/or beneficiary(ies) of said funds.

8 11. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, one
 9 or more of Defendants herein was the alter ego of one or more of the other Defendants, and as hereinafter
 10 alleged, was acting for their own benefit and/or the benefit of one or more of the remaining Defendants.

11 12. Plaintiff is informed and believes, and thereon alleges, that there exists a unity of ownership and
 12 interest, between Defendant CHASE and one or more of the other Defendants herein, including specifically
 13 BOUDREAU, such that any individuality and separateness between said other Defendants and Defendant
 14 CHASE has ceased, and the said other Defendants, and each of them, was at all times relevant to Plaintiff's
 15 claim, and remains, the alter ego of Defendant CHASE and all other Defendants.

16 13. Plaintiff is informed and believes and thereon alleges the Court's adherence to the fiction of the
 17 separate existence of any or all Defendants as entities distinct from the other Defendants would permit an
 18 abuse of the corporate privilege, would sanction fraud and/or promote injustice in that said Defendants, and
 19 each of them, have defaulted on their individual and collective obligations to Plaintiff under California law.

20 14. Plaintiff is informed and believes and thereon alleges that Defendant CHASE was an entity
 21 which is, and at all times herein mentioned was, controlled, dominated, and operated by one or more of the
 22 other Defendants, including specifically BOUDREAU, as BOUDREAU's individual business and alter ego,
 23 in that the activities and business of Defendant CHASE was carried on without the holding of director's or
 24 shareholders meetings, no records or minutes of any corporate proceedings were maintained.

25 15. Plaintiff is informed and believes and thereon alleges that Defendant CHASE, and all other
 26 business entity Defendants herein, is and at all times herein mentioned was, a mere shell and sham without
 27 the requisite capital and assets. Thus, said Defendant CHASE, and all other business entity Defendants
 28 herein, is and at all times herein mentioned was, so inadequately capitalized that, compared with the business

1 to be done by Defendant, said capitalization was in adequate to do business properly and legally under
 2 California law.

3 16. As a direct and proximate result of the unlawful acts of Defendants, Plaintiff has suffered and
 4 continues to suffer from loss of earnings in amounts as yet unascertained, but subject to proof at trial.

5 17. CLARK was employed as a Sr. Tech Analyst with Defendants, and each of them, continuously
 6 from around 1997 until on or about JULY 15, 2005. CLARK's principal job duties consisted of building
 7 and writing codes.

8 18. At all times relevant herein, Plaintiff was entitled to an hourly rate of pay of approximately
 9 \$21.35 - \$36.39 per hour.

10 19. Under Wage Orders established by the Department of Labor Standards and Enforcement
 11 ("D.L.S.E."), CLARK does not qualify as an "exempt employee", and therefore, CLARK's employment is
 12 subject to all appropriate laws with respect to a non-exempt employee who is entitled to an hourly wage and
 13 therefore, also entitled to overtime wages.

14 20. CLARK routinely worked in excess of eight (8) hours per day and forty (40) hours per week,
 15 all without receiving proper wages, any overtime or double-time pay.

16 21. CLARK was consistently paid incorrectly by Defendants, because they failed to pay CLARK
 17 proper wages, for all hours worked, and for all applicable overtime hours to which he/she was entitled.

18 22. At all times relevant herein, the Industrial Welfare Commission ("IWC") Wage Orders, as
 19 amended (8 Cal.Code Regs. § 11050), applied to wages, hours, and working conditions of all persons such
 20 as Plaintiff, and all of Plaintiff's co-workers employed by Defendants, and each of them.

21 23. As a general rule, Defendants routinely denied Plaintiff herein a ten (10) minute rest break in
 22 the morning, and a ten (10) minute rest break in the afternoon, and/or a rest or meal break for every four (4)
 23 hours Plaintiff worked.

24 24. Throughout CLARK's employment, Defendants and each of them failed to provide Plaintiff with
 25 accurate itemized wage statements showing the correct number of hours worked by CLARK at the effective
 26 regular and overtime rates of pay applicable to those hours worked.

27 25. On OCTOBER 12, 2007, Plaintiff by certified mail served notice of the violations alleged in this
 28 complaint, in the manner required by Labor Code § 2699.3, on the California Labor & Workforce

1 Development Agency, 801 K Street, Suite 2101, Sacramento, CA 95814 (hereinafter the "LABOR
 2 BOARD." Said notice was also served by certified mail on Defendants, at Defendants' last known
 3 address(es). Upon the expiration of thirty-three (33) days or more following the sending of the notice, and
 4 neither of the Plaintiff herein, nor Plaintiff's counsel having received notice from the LABOR BOARD that
 5 said agency was accepting Plaintiff's claim for prosecution, Plaintiff alleges the right to proceed with all
 6 remedies provided by law, including in addition to any compensatory damages awarded on Plaintiff's
 7 complaint herein, any and all statutory penalties which are collectible by Plaintiff under the provisions of
 8 Labor Code §§ 2698-2699.5, commonly known as the Labor Code Private Attorney General Act of 2004.
 9

10 **CLAIMS FOR RELIEF**

11 **FIRST CAUSE OF ACTION**

12 **(Failure to Pay Overtime – Against All Defendants)**

13 26. Plaintiff realleges and incorporates by reference under this cause of action each and every
 14 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

15 27. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and related statutes, and also pursuant to all
 16 IWC Wage Orders applicable to Plaintiff's industry and occupation, Defendants were required to
 17 compensate Plaintiff for all overtime actually worked, at the rate of one and one-half (1 ½) times the regular
 18 rate of pay for hours worked in excess of forty (40) hours per week.

19 28. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and related statutes, and also pursuant to all
 20 IWC Wage Orders applicable to Plaintiff's industry and occupation, beginning on 1997, and continuing until
 21 the date Plaintiff ceased to be employed by Defendants, or any of them, Defendants and each of them were
 22 required to compensate Plaintiff for all overtime actually worked, which is calculated according to law for
 23 all hours worked in excess of eight (8) hours per day, 40 hours per week or on specific days of the week, as
 24 shall be shown at the time of trial.

25 29. Plaintiff was a nonexempt employee entitled to the protections of the California Labor Code,
 26 and also of all IWC Wage Orders applicable to Plaintiff's industry and occupation. During the course of
 27 CLARK's employment, Defendants, and each of them, failed to compensate Plaintiff CLARK for overtime
 28 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and dou 6-time hours

1 for hours worked in excess of twelve (12) hours per day, as required under the aforementioned labor
 2 regulations.

3 30. Beginning on or about 1997, pursuant to Labor Code §§ 200, 510, 1194, and 1198, and all IWC
 4 Wage Orders applicable to Plaintiff's industry and occupation, Defendants were required to compensate
 5 Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight (8) per day
 6 and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any
 7 work week, and double time after twelve (12) hours in any single workday and/or after eight (8) hours on
 8 the seventh (7th) consecutive day of any work week.

9 31. At all times relevant herein, Labor Code § 1194(a) provided that an employee, in the position
 10 of CLARK, who had not been paid overtime compensation could recover the unpaid balance of the full
 11 amount of overtime wages due, including interest thereon, together with reasonable attorney's fees and costs
 12 of suit.

13 32. Within the last four (4) years preceding the filing of this complaint, Defendants have employed
 14 Plaintiff CLARK as a Sr. Tech Analyst.

15 33. Throughout Plaintiff's respective employment, Defendants have failed and refused to pay and
 16 properly calculate overtime compensation to Plaintiff as required by law.

17 34. As a direct and proximate result of Defendants' willful, knowing, and intentional failure to pay
 18 overtime wages, CLARK has suffered and continues to suffer wage losses in a sum according to proof.

19 35. Plaintiff has incurred and continue(s) to incur legal expenses and attorney's fees. Plaintiff is
 20 entitled to legal expenses and attorney's fees pursuant to California Labor Code §1194(a), in sums according
 21 to proof.

23 SECOND CAUSE OF ACTION

24 (Waiting Time Penalties - Cal. Lab. Code §§ 203, 558 et seq. – Against All Defendants)

25 36. Plaintiff realleges and incorporates by reference under this cause of action each and every
 26 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

27 37. Plaintiff CLARK ceased being employed by Defendants, on or about JULY 15, 2005, whereby
 28 all monies owed must be paid, pursuant to statute (Labor Code §§201(a) and 227.3), to CLARK within the

1 || time prescribed by law.

2 38. To date, Plaintiff CLARK has still not been paid in full for, but not limited to: wages owed,
3 overtime or double-time owed.

4 39. Defendants have willfully failed to pay Plaintiff all monies owed to Plaintiff.

5 40. As a result of these failures to pay, Plaintiff is individually entitled to waiting time penalties
6 pursuant to Labor Code § 203, for a period of thirty (30) days.

7 41. Plaintiff has incurred, and continues to incur, legal expenses and attorney's fees. Plaintiff is
8 entitled to legal expenses and attorney's fees, pursuant to Labor Code §218.5, in a sum according to proof.

THIRD CAUSE OF ACTION

**(For Violation of Labor Code § 226 – Failure to Provide Accurate Itemized Statements
Against All Defendants)**

13 42. Plaintiff realleges and incorporates by reference under this cause of action each and every
14 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

15 43. At all times relevant herein, Defendants violated Labor Code § 226, in that Defendants failed
16 to properly and accurately itemize the number of hours worked by Plaintiff at the effective regular rates
17 of pay and the effective overtime rates of pay.

18 44. In a letter dated OCTOBER 24, 2007 to JAMES BOUDREAU, demand was made by
19 Plaintiff for his employment records. Defendants having willfully failed to produce any of the requested
20 records, as a legal and proximate result, Plaintiff is entitled to penalties in sums to be calculated and
21 imposed by the Court at the time of trial in this matter. Defendants and each of them are in violation of
22 Labor Code § 226, and are thus liable jointly and severally as set forth below.

23 45. Defendants and each of them, knowingly and intentionally failed to comply with Labor Code
24 § 226, causing damages to Plaintiff. These damages, including but limited to costs expended calculating
25 the true hours worked and the amount of employment taxes which were not properly paid to state and
26 federal tax authorities, are difficult to estimate. Therefore, Plaintiff elects to recover liquidated damages
27 of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in
28 subsequent pay periods pursuant to the Labor Code § 226, in an amount according to proof at the time of

1 trial (but in no event more than \$4,000.00 for respective Plaintiff herein) plus reasonable attorney's fees
 2 and costs, plus a penalty of \$750.00 pursuant to Labor Code § 226(e)(f).

3

4

5

6 **FOURTH CAUSE OF ACTION**

7 **(Compensation For Required Rest Periods Not Provided – Cal. Lab. Code §§ 226.7 and**
 8 **IWC Wage Orders – Against All Defendants)**

9 46. Plaintiff realleges and incorporates by reference under this cause of action each and every
 10 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

11 47. Pursuant to Labor Code § 226.7, and all IWC Wage Orders applicable to Plaintiff's industry and
 12 occupation, Defendants were required to authorize and permit employees, such as Plaintiff herein, to take
 13 rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest time per four (4) hours
 14 or major fraction thereof, with no deduction from wages.

15 48. Defendants failed and refused to authorize and permit Plaintiff to take ten (10) minute rest
 16 periods for every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7 and
 17 all IWC Wage Orders applicable to Plaintiff's industry and occupation.

18 49. Defendants further violated Labor Code § 226.7, and all IWC Wage Orders applicable to
 19 Plaintiff's industry and occupation, by failing to pay Plaintiff according to law, in amounts according to
 20 proof at the time of trial, which amount remain owing and unpaid.

21

22 **FIFTH CAUSE OF ACTION**

23 **(For Unfair Competition In Violation of Unfair Business Practices - Business & Professions Code**
 24 **§§ 17200-*et seq.* – By Plaintiff Acting Each Individually, and also For the Interests of the General**
 25 **Public – Against All Defendants)**

26 50. Plaintiff realleges and incorporates by reference under this cause of action each and every
 27 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

28 51. California Business & Professions Code §§ 17200-*et seq.* prohibits acts of unfair competition,

1 which includes any "unlawful and unfair business practices."

2 52. Defendants' and each of their conduct, as alleged herein, has been and continues to be unfair,
 3 unlawful, and deleterious to Plaintiff herein, and to the general public. Plaintiff hereby seeks to enforce
 4 important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.
 5 Plaintiff is a "person" within the meaning of the Business & Professions Code § 17204, and thus possesses
 6 standing to bring this suit for injunctive relief and restitution.

7 53. It is the policy of this State to enforce minimum labor standards, to ensure that employees are
 8 not required or permitted to work under substandard and unlawful conditions, and to protect those employers
 9 who comply with the law from losing competitive advantage to other employers who fail to comply with
 10 labor standards and requirements.

11 54. Through the conduct alleged herein, Defendants acted contrary to these public policies and have
 12 engaged in unlawful and/or unfair business practices in violation of Business & Professions Code §§ 17200
 13 et. seq., depriving Plaintiff herein, and other employees similarly situated, of the rights, benefits, and
 14 privileges guaranteed to employees under California law.

15 55. Defendants, and each of them, regularly and routinely violated the following statutes and
 16 regulations with respect to Plaintiff herein, and other employees similarly situated: Labor Code §§ 510 and
 17 1194, and all IWC Wage Orders applicable to Plaintiff's industry and occupation (failure to pay overtime
 18 pay); Labor Code § 226 (failing to provide accurate wage statements to employees at the time of
 19 payment); and/or Labor Code § 226.7 and all IWC Wage Orders applicable to Plaintiff's industry and
 20 occupation (failure to provide rest and meal periods).

21 56. By engaging in these business practices, which are unfair business practices within the meaning
 22 of Business & Professions Code §§ 17200-*et. seq.*, Defendants harmed Plaintiff herein, and also similarly
 23 situated employees, and thus by that design and plan gained an unfair competitive edge in the marketplace.

24 57. Under Business & Professions Code § 17203, Plaintiff is entitled to obtain restitution of these
 25 funds, on Plaintiff's own behalf, and also for other employees similarly affected by Defendants' unfair
 26 business practices as enumerated herein.

27 58. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent
 28 Defendants from continuing to engage in the unfair business practices as alleged herein. Plaintiff is

1 informed and believes that Defendants, and persons acting in concert with them, have committed and will
 2 continue to commit the above unlawful acts unless restrained or enjoined by this Court. Unless the relief
 3 prayed for below is granted, a multiplicity of actions will result. Plaintiff and other interested persons have
 4 no plain, speedy, or adequate remedy at law, in that pecuniary compensation would not afford adequate and
 5 complete relief. The above-described acts will cause great and irreparable damage to Plaintiff and other
 6 interested persons, unless Defendants are restrained from committing further illegal acts.

7 59. Plaintiff's success in this action will result in the enforcement of important rights affecting the
 8 public and will confer a significant benefit upon the general public. Private enforcement of the rights
 9 enumerated in this complaint is necessary, as public agencies have only sought limited enforcement of those
 10 rights, if any. Plaintiff, individually and by and through counsel, has incurred and continues to incur a
 11 financial burden in pursuing this action on behalf of the general public. Plaintiff further seeks to enjoin the
 12 above-referenced unlawful actions under the Labor Code. Therefore, Plaintiff seeks an award of attorney's
 13 fees and costs of suit on this cause of action pursuant to Code of Civil Procedure § 1021.5 and other
 14 applicable Labor Code sections.

15

16 SIXTH CAUSE OF ACTION

17 (Constructive Trust - Against All Defendants)

18 60. Plaintiff realleges and incorporates by reference under this cause of action each and every
 19 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

20 61. During the course of the events detailed in this complaint, and arising out of the relationship
 21 between employer and employee, as existed between Plaintiff and Defendants, and each of them, a special
 22 relationship of trust arose between Plaintiff and Defendants, and each of Defendants.

23 62. Contrary to and in direct violation of that special relationship, and contrary to the duties of trust
 24 and fidelity imposed on employers by California law, Defendants, and each of them, violated said trust by
 25 retaining monies due to Plaintiff, at the occasion of each and every regular payday when Plaintiff, relying
 26 on Defendants' and each of their loyalty, good faith, honesty and integrity, accepted pay from Defendants,
 27 and each of them, which was less than the sums actually due Plaintiff for the time worked during that pay
 28 period.

1 63. Thus, Defendants, and each of them, on the occasion of each and every payday when pay was
 2 rendered to Plaintiff, did retain, convert and embezzle the monies rightfully due Plaintiff – specifically, the
 3 sums due for overtime worked, but not paid for.

4 64. The true amount(s) of said monies due is/are amenable to proof at the time of trial. Plaintiff has
 5 no adequate remedy at law to prevent Defendants, and each of them, from looting said funds from the
 6 accounts of the other Defendants, and each of them, and thus prays this Court impose the equitable remedy
 7 of constructive trust, in the sum of all monies due under this complaint, including overtime pay for
 8 uncompensated time worked, interest, costs and attorneys' fees, on any and all funds, assets, accounts, or
 9 other appropriate monies and things, with the beneficiary of said trust being Plaintiff.

10 65. The equities balance in favor of the imposition of such a constructive trust, since Defendants,
 11 and each of them, with their superior bargaining power, economic resources and the mechanisms of banking
 12 and finance, stand in a much more powerful position than Plaintiff, who has no practical way to constrain
 13 or prevent Defendants from wasting, converting or further secreting said assets, monies and things, than by
 14 this Court's imposition of said constructive trust.

15 WHEREFORE, Plaintiff CLARK respectfully prays this Court enter judgment in favor of Plaintiff
 16 CLARK, and against Defendants CHASE, BOUDREAU, and such Defendants as may be added as "Doe"
 17 Defendants herein, and each of them, jointly and severally, individually and collectively, as follows:

- 18 1. For back pay, front pay, and other Special Damages according to proof;
- 19 2. For general Damages as shall be shown at the time of trial;
- 20 3. For all statutory damages;
- 21 4. For restitution of all monies due to CLARK, and disgorgement of profits from the unlawful
 business practices of Defendants;
- 22 5. For punitive damages in the sound discretion of the Court;
- 23 6. For pre-judgment and post-judgment interest on all damages awarded;
- 24 7. For all penalties imposed as stipulated by the California Labor Code; including waiting time
 penalties, pursuant to Labor Codes §§ 203 and 558;
- 25 8. For reasonable attorneys' fees, pursuant to Labor Code §§ 218.5, 2699. Code of Civil Procedure
 §1021.5, Business & Professions Code § 17200-*et seq.*, and according to any other attorney-fee statutes

1 found by the Court to apply to the facts presented at trial;

2 9. For costs of suit incurred;

3 10. For compensation of one hour at the regular rate of pay for each rest period denied in violation
4 of Labor Code § 226.7 and all IWC Wage Orders applicable to Plaintiff's industry and occupation, according
5 to proof;

6 11. For a preliminary and permanent injunction ordering each and every Defendant to cease such
7 unlawful and unfair practices as alleged herein above and proved to the Court at the time of trial, requiring
8 the establishment of appropriate and effective means to prevent future violations;

9 12. For the imposition of a constructive trust against Defendants, and each of them, and such
10 appropriate preliminary injunction as the Court may order during the period before a final judgment is
11 entered in this matter, on such assets, monies and things, as Plaintiff shall show the Court at trial, or in the
12 case of any application for preliminary injunction, such assets, monies and things as Plaintiff shall show the
13 Court to exist at the time such *pendente lite* relief may be sought; AND

14 13. For such other and further relief as the Court deems just.

15
16 DATED: December 6, 2007 UNITED EMPLOYEES LAW GROUP, PC

17
18 
19 GREGORY A. DOUGLAS
20 Attorney for Plaintiff,
CHRISTOPHER CLARK
21
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25
26
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Angie Phung, Esq. SBN 238949 Walter L. Haines SBN 71075 United Employees Law Group, P.C. 65 Pine Ave., #. 312 Long Beach, CA 90802 TELEPHONE NO.: 562-256-1047 FAX NO. (Optional): 562.256-1006 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101-3409 BRANCH NAME: Central Division		
PLAINTIFF/PETITIONER: Christopher Clark,		
DEFENDANT/RESPONDENT: Chase Home Finance, LLC.		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		CASE NUMBER: 37200700083776CUOECTL

TO (insert name of party being served): Andrew Livingston, Esq.

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: JANUARY 15, 2008

Christine Agosto

(TYPE OR PRINT NAME)

► Christine Agosto (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other: (specify):

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

FOR COURT USE ONLY

Gregory A. Douglas, Esq. SBN
 Walter L. Haines SBN 71075
 United Employees Law Group, P.C.
 65 Pine Ave., Ste. 312
 Long Beach, CA 90802

TELEPHONE NO.: 562-256-1047

FAX NO. (Optional): 562.256-1006

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego

STREET ADDRESS: 220 W. Broadway

MAILING ADDRESS:

CITY AND ZIP CODE: San Diego, CA 92101-3409

BRANCH NAME: Central Division

PLAINTIFF/PETITIONER: Christopher Clark

DEFENDANT/RESPONDENT: Chase Home Finance, LLC

NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL

CASE NUMBER:

37-2007-00083776

TO (insert name of party being served): Chase Home Finance, LLC

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: February 21, 2008

Christine Agosto

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. A copy of the summons and of the complaint.
2. Other: (specify): Conformed First Amended Complaint For Damages, Restitution and Statutory Penalties

(To be completed by recipient):

Date this form is signed:

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

1 UNITED EMPLOYEES LAW GROUP, P.C.
 2 Walter L. Haines, Esq. SBN 71075
 3 Gregory A. Douglas, Esq. SBN 147166
 4 Angie Phung, Esq. SBN 238949
 5 65 Pine Ave., #312
 Long Beach, CA 90802
 Tel: (562) 256-1047
 Fax: (562) 256-1006

FILED
Clerk of the Superior Court

FEB 14 2008

By: M. SCOTT, Deputy

6 Attorneys for Plaintiffs
 7 CHRISTOPHER CLARK and JAMES RENICK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 COUNTY OF SAN DIEGO

10
 11 CHRISTOPHER CLARK and JAMES
 RENICK, individuals

12 Plaintiffs,

13 vs.

14
 15 CHASE HOME FINANCE, LLC, a
 Delaware LLC doing business in
 California; CHASE MANHATTAN
 16 MORTGAGE CORPORATION, a New
 Jersey corporation doing business in
 California; JAMES BOUDREAU, an
 17 individual; and DOES 1-25,

18 Defendant(s).

19) Case № 37-2007-00083776-CU-OE-CTL
 20)
 21) FIRST AMENDED COMPLAINT FOR
 22) DAMAGES, RESTITUTION AND STATUTORY
 23) PENALTIES
 24)
 25) 1. Failure to Pay Overtime [Lab.C. §§ 510, 1194,
 26) 1198];
 27) 2. Waiting Time Penalties [Lab.C. §§ 203, 558];
 28) 3. Failure to Provide Accurate Itemized
 29) Statements [Lab. Code §226];
 30) 4. Failure to Provide Rest Periods
 31) [Lab.C. §§ 226.7 and IWC Wage Orders];
 32) 5. Unfair Competition [B&PC § 17200-*et seq.*];
 33) 6. Failure to Pay Overtime and Provide Itemized
 34) Wage Statements [Labor Code §2699];

35
 36 COME NOW Plaintiffs CHRISTOPHER CLARK and JAMES RENICK (hereinafter referred to
 37 individually as "CLARK" and "RENICK" respectively, or collectively as "Plaintiffs"), both individuals,
 38 and complain and allege against Defendants CHASE HOME FINANCE, LLC; CHASE MANHATTAN
 39 MORTGAGE CORPORATION; JAMES BOUDREAU; and DOES 1-25, and each of them, for causes of
 40 action as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiffs, for themselves each individually, bring this action against Defendants CHASE HOME FINANCE, LLC, CHASE MANHATTAN MORTGAGE CORPORATION, JAMES BOUDREAU, and DOES 1 through 25, inclusive, for statutory damages, injunctive relief, prejudgment interest, costs, attorney's fees, restitution, Labor Code penalties, and other appropriate relief for Defendants' violations of various sections of the California Labor Code, Industrial Welfare Commission Wage Orders, and Business & Professions Code §§ 17200-*et seq.* Jurisdiction is proper in this Court because alleged damages exceed \$25,000.00 and Plaintiffs seek a permanent injunction according to Code of Civil Procedure § 580 (b)(2).

2. At all times mentioned herein, Plaintiff CLARK was a resident of SAN DIEGO County, State of California. CLARK is a former employee of Defendants, and each of them.

3. At all times mentioned herein, Plaintiff RENICK was a resident of RIVERSIDE County, State of California. RENICK is a former employee of Defendants, and each of them.

4. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendant CHASE HOME FINANCE, LLC (hereinafter referred to as "CHASE HOME FINANCE" individually, or collectively as "Defendants") was and is a Delaware LLC doing business in California with its principal place of business located at 10790 RANCHO BERNARDO ROAD, SAN DIEGO, CA 92127, in the County of SAN DIEGO, State of California.

5. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendant CHASE MANHATTAN MORTGAGE CORPORATION (hereinafter referred to as "CHASE MANHATTAN MORTGAGE" individually, or collectively as "Defendants") was and is a New Jersey corporation doing business in California.

6. Plaintiffs are informed and believe, and on that basis allege, that at all times mentioned herein, Defendant JAMES BOUDREAU (hereinafter referred to as "BOUDREAU" individually, or collectively with other Defendants as "Defendants") was a resident of SAN DIEGO County. Plaintiffs are informed and believe, and on that basis allege, that Defendant BOUDREAU is one of the managers of the entity Defendant, and was one of each of Plaintiff's employers for purposes of the Labor Code violations alleged herein, in that he exercised direct control over wages, hours, and working conditions of each Plaintiff; he

1 failed and refused to pay, among other things, overtime compensation; he paid each Plaintiff without
 2 accurate itemized wage statements; and he failed to authorize and/or permit rest periods pursuant to Labor
 3 Code § 226.7 and all IWC Wage Orders applicable to Plaintiff's industry and occupation.

4 7. Plaintiffs are informed and believe, and thereon allege, that Defendants, and each of them,
 5 directly employed or exercised control over each respective Plaintiff's wages, hours, and/or working
 6 conditions, and were thus "employers" within the meaning of all applicable statutes. As such each
 7 Defendant, pursuant to section 558, subdivision (a), is a person who is an employer or who is acting on
 8 behalf of an employer who violates, or causes to be violated, a statute or wage order relating to working
 9 hours and is therefore subject to a civil penalty, payable to the affected employee, equal to the amount of
 10 any underpaid wages.

11 8. Plaintiffs are informed and believe and thereon allege, that at all times relevant herein, each and
 12 every Defendant named herein, whether in their individual capacity or as a "Doe" Defendant, was at all
 13 times relevant to each Plaintiff's claims herein the agent, employee, servant, master, and/or employer of
 14 each and every other Defendant, however named, and in doing the things herein alleged, were acting within
 15 the course and scope of such agency or employment, and with the approval and ratification of each of the
 16 other Defendants.

17 9. Plaintiffs CLARK and RENICK are ignorant of the true names and capacities of defendants sued
 18 herein as DOES 1 through 25, inclusive, and therefore sue said Defendants by such fictitious names and
 19 capacities. Plaintiffs will amend this complaint to show said Defendants' true names and capacities when
 20 they have been ascertained. Plaintiffs are informed and believe and thereon allege that at all times relevant,
 21 Defendant BOUDREAU and each of said fictitiously named DOE defendants, was a business entity or
 22 individual person who owned, controlled, or managed the business for which each Plaintiff worked, and/or
 23 who directly or indirectly exercised operational control over each Plaintiff's wages, hours, and working
 24 conditions. Plaintiffs further allege that said each and every one of said Defendants held ownership, officer,
 25 director and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
 26 Defendants, which included decision-making responsibility for, and establishment of, illegal payroll
 27 practices and policies for Defendants which have damaged each Plaintiff in individual and separate
 28 amounts. Thus, all Defendants herein, whether named in this Complaint or named as DOES 1 through 25,

1 were and are "employers" as a matter of law, and each is individually liable on all causes of action alleged
 2 herein.

3 10. Plaintiffs are informed and believe, and thereon allege, that each and every Defendant herein
 4 is, and at all times relevant hereto was, a person, corporation or other business entity existing and operating
 5 within the confines of the State of California, and thus subject to the jurisdiction of the California courts
 6 by reason of "minimum contacts" in California, and/or by purposeful availment of the California market
 7 for labor of the kind provided by each Plaintiff, and did transact and conduct business in the State of
 8 California, and are thus subject to the jurisdiction of all laws, regulations and court decisions rendered by
 9 the State of California. Specifically, Defendants, and each of them, maintain offices, operate businesses,
 10 employ persons, conduct business in, and pay employees by illegal payroll practices and policies in the
 11 County of SAN DIEGO.

12 11. Plaintiffs are further informed and believe, and thereon allege, that each and every Defendant
 13 herein aided and assisted the other Defendants in committing the wrongful acts alleged herein, and that each
 14 Plaintiff's damages were proximately caused by each and every Defendant herein.

15 12. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned,
 16 each and every Defendant herein was in some fashion, by contract or otherwise, the successor, assign, joint
 17 venturer, co-venturer, indemnitor, guarantor or partner of one or more of the remaining Defendants, and
 18 all times relevant to each Plaintiff's claim alleged herein, was acting within that capacity. Plaintiffs further
 19 allege that each and every Defendant to some degree and extent wrongfully received and/or wrongfully
 20 benefitted from the flow of assets from the other Defendants, to the detriment of Plaintiffs, and each of
 21 them, the rightful owners of the pay denied them, and that such equities exist to merit this Court imposing
 22 restrictive orders, including without limitation a constructive trust on such assets in the control of
 23 Defendants, or any of them, or their agents or anyone acting on their behalf, as Plaintiffs may trace to the
 24 wrongful recipient(s) and/or beneficiary(ies) of said funds.

25 13. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned,
 26 one or more of Defendants herein was the alter ego of one or more of the other Defendants, and as
 27 hereinafter alleged, was acting for their own benefit and/or the benefit of one or more of the remaining
 28 Defendants.

1 14. Plaintiffs are informed and believe, and thereon allege, that there exists a unity of ownership
 2 and interest, between Defendant CHASE HOME FINANCE and one or more of the other Defendants
 3 herein, including specifically BOUDREAU, such that any individuality and separateness between said other
 4 Defendants and Defendant CHASE HOME FINANCE has ceased, and the said other Defendants, and each
 5 of them, was at all times relevant to each respective Plaintiff's claim, and remains, the alter ego of
 6 Defendant CHASE HOME FINANCE and all other Defendants.

7 15. Plaintiffs are informed and believe, and thereon allege, that there exists a unity of ownership
 8 and interest, between Defendant CHASE MANHATTAN MORTGAGE and one or more of the other
 9 Defendants herein, including specifically BOUDREAU, such that any individuality and separateness
 10 between said other Defendants and Defendant CHASE MANHATTAN MORTGAGE has ceased, and the
 11 said other Defendants, and each of them, was at all times relevant to each respective Plaintiff's claim, and
 12 remains, the alter ego of Defendant CHASE MANHATTAN MORTGAGE and all other Defendants.

13 16. Plaintiffs are informed and believe and thereon allege the Court's adherence to the fiction of
 14 the separate existence of any or all Defendants as entities distinct from the other Defendants would permit
 15 an abuse of the corporate privilege, would sanction fraud and/or promote injustice in that said Defendants,
 16 and each of them, have defaulted on their individual and collective obligations to each Plaintiffs under
 17 California law.

18 17. Plaintiffs are informed and believe and thereon allege that Defendant CHASE HOME
 19 FINANCE was an entity which is, and at all times herein mentioned was, controlled, dominated, and
 20 operated by one or more of the other Defendants, including specifically BOUDREAU, as BOUDREAU's
 21 individual business and alter ego, in that the activities and business of Defendant CHASE HOME
 22 FINANCE was carried on without the holding of director's or shareholders meetings, no records or minutes
 23 of any corporate proceedings were maintained.

24 18. Plaintiffs are informed and believe and thereon allege that Defendant CHASE HOME
 25 FINANCE, and all other business entity Defendants herein, is and at all times herein mentioned was, a mere
 26 shell and sham without the requisite capital and assets. Thus, said Defendant CHASE HOME FINANCE,
 27 and all other business entity Defendants herein, is and at all times herein mentioned was, so inadequately
 28 capitalized that, compared with the business to be done by Defendant, said capitalization was in adequate

1 to do business properly and legally under California law.

2 19. Plaintiffs are informed and believe and thereon allege that Defendant CHASE MANHATTAN
 3 MORTGAGE was an entity which is, and at all times herein mentioned was, controlled, dominated, and
 4 operated by one or more of the other Defendants, including specifically BOUDREAU, as BOUDREAU's
 5 individual business and alter ego, in that the activities and business of Defendant CHASE MANHATTAN
 6 MORTGAGE was carried on without the holding of director's or shareholders meetings, no records or
 7 minutes of any corporate proceedings were maintained.

8 20. Plaintiffs are informed and believe and thereon allege that Defendant CHASE MANHATTAN
 9 MORTGAGE, and all other business entity Defendants herein, is and at all times herein mentioned was,
 10 a mere shell and sham without the requisite capital and assets. Thus, said Defendant CHASE
 11 MANHATTAN MORTGAGE, and all other business entity Defendants herein, is and at all times herein
 12 mentioned was, so inadequately capitalized that, compared with the business to be done by Defendant, said
 13 capitalization was in adequate to do business properly and legally under California law.

14 21. As a direct and proximate result of the unlawful acts of Defendants, Plaintiffs each individually
 15 has/have suffered and continue(s) to suffer from loss of earnings in amounts as yet unascertained, but
 16 subject to proof at trial.

17 22. CLARK was employed as a Sr. Tech Analyst with Defendants, and each of them, continuously
 18 from around 1997 until on or about JULY 15, 2005. CLARK'S job title did not necessarily accurately
 19 describe the work performed. Plaintiff was not primarily engaged (more than 50 percent of the time) in
 20 duties that meet the test of the exemption.

21 23. At all times relevant herein, Plaintiff CLARK was entitled to an hourly rate of pay of
 22 approximately \$21.35 - \$36.39 per hour.

23 24. Under Wage Orders established by the Department of Labor Standards and Enforcement
 24 ("D.L.S.E."), CLARK does not qualify as an "exempt employee", and therefore, CLARK's employment
 25 is subject to all appropriate laws with respect to a non-exempt employee who is entitled to an hourly wage
 26 and therefore, also entitled to overtime wages.

27 25. CLARK routinely worked in excess of eight (8) hours per day and forty (40) hours per week,
 28 all without receiving proper wages, including without limitation overtime and/or double-time pay.

1 26. CLARK was consistently paid incorrectly by Defendants, because they failed to pay CLARK
 2 the proper wages, for all hours worked, and for all applicable overtime hours to which CLARK was
 3 entitled.

4 27. RENICK was employed as a Sr. Tech Analyst with Defendants, and each of them, continuously
 5 from on or about FEBRUARY 2000 until on or about APRIL 6, 2005. RENICK'S job title did not
 6 necessarily accurately describe the work performed. Plaintiff was not primarily engaged (more than 50
 7 percent of the time) in duties that meet the test of the exemption.

8 28. At all times relevant herein, Plaintiff RENICK was entitled to an hourly rate of pay of
 9 approximately \$30.05 - \$32.50 per hour.

10 29. Under Wage Orders established by the Department of Labor Standards and Enforcement
 11 ("D.L.S.E."), RENICK does not qualify as an "exempt employee", and therefore, RENICK's employment
 12 is subject to all appropriate laws with respect to a non-exempt employee who is entitled to an hourly wage
 13 and therefore, also entitled to overtime wages.

14 30. RENICK routinely worked in excess of eight (8) hours per day and forty (40) hours per week,
 15 all without receiving proper wages, any overtime or double-time pay.

16 31. RENICK was consistently paid incorrectly by Defendants, because they failed to pay RENICK
 17 the proper wages for all hours worked, and for all applicable overtime hours to which RENICK was
 18 entitled. RENICK complained to Defendants about this fact, to no avail.

19 32. At all times relevant herein, all applicable provisions of the Labor Code, and all Industrial
 20 Welfare Commission ("IWC") Wage Orders applicable to Plaintiff's industry and occupation, applied to
 21 wages, hours, and working conditions of all persons such as Plaintiffs CLARK and RENICK, and their co-
 22 workers employed by Defendants, and each of them.

23 33. As a general rule, Defendants routinely denied both Plaintiffs herein, each individually, a ten
 24 (10) minute rest break in the morning, and a ten (10) minute rest break in the afternoon, and/or a rest or
 25 meal break for every four (4) hours each Plaintiff worked.

26 34. Throughout CLARK's employment, Defendants and each of them failed to provide Plaintiff
 27 CLARK with accurate itemized wage statements showing the correct number of hours worked by CLARK
 28 at the effective regular and overtime rates of pay applicable to those hours worked.

1 35. Throughout RENICK's employment, Defendants and each of them failed to provide Plaintiff
 2 RENICK with accurate itemized wage statements showing the correct number of hours worked by RENICK
 3 at the effective regular and overtime rates of pay applicable to those hours worked.

4 36. Plaintiffs by certified mail served notice of the violations alleged in this complaint, in the
 5 manner required by Labor Code § 2699.3, on the California Labor & Workforce Development Agency, 801
 6 K Street, Suite 2101, Sacramento, CA 95814 (hereinafter the "LABOR BOARD.") Said notice was also
 7 served by certified mail on Defendants, at Defendants' last known address(es). Upon the expiration of
 8 thirty-three (33) days or more following the sending of the notice, if neither of the Plaintiffs herein, nor
 9 Plaintiffs' counsel have received notice from the LABOR BOARD that said agency was accepting
 10 Plaintiffs' claim for prosecution, Plaintiffs allege the right to proceed with all remedies provided by law,
 11 including in addition to any compensatory damages awarded on Plaintiffs' complaint herein, any and all
 12 statutory penalties which are collectible by each Plaintiff under the provisions of Labor Code §§ 2698-
 13 2699.5, commonly known as the Labor Code Private Attorney General Act of 2004.

14

15 **CLAIMS FOR RELIEF**

16 **FIRST CAUSE OF ACTION**

17 **(Failure to Pay Overtime – Against All Defendants)**

18 37. Plaintiffs reallege and incorporate by reference under this cause of action each and every
 19 allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

20 38. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and related statutes, and also pursuant to all
 21 IWC Wage Orders applicable to Plaintiffs' industry and occupation, Defendants were required to
 22 compensate each respective Plaintiff herein for all overtime actually worked, at the rate of one and one-half
 23 (1 ½) times the regular rate of pay for hours worked in excess of forty (40) hours per week.

24 39. Pursuant to Labor Code §§ 510, 558, 1194, 1198 and related statutes, and also pursuant to all
 25 IWC Wage Orders applicable to Plaintiffs' industry and occupation, beginning on or about both Plaintiffs'
 26 respective first dates of employment, and continuing until the date each respective Plaintiff ceased to be
 27 employed by Defendants, or any of them, Defendants and each of them were required to compensate each
 28 Plaintiff for all overtime actually worked, which is calculated according to law for all hours worked in

1 excess of eight (8) hours per day, 40 hours per week or on specific days of the week, as shall be shown at
 2 the time of trial.

3 40. Plaintiff CLARK was a nonexempt employee entitled to the protections of the California Labor
 4 Code, and also of all IWC Wage Orders applicable to Plaintiff's industry and occupation. During the
 5 course of CLARK's employment, Defendants, and each of them, failed to compensate Plaintiff CLARK
 6 for overtime hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and
 7 double-time hours for hours worked in excess of twelve (12) hours per day, as required under the
 8 aforementioned labor regulations.

9 41. Plaintiff RENICK was a nonexempt employee entitled to the protections of the California Labor
 10 Code, and also of all IWC Wage Orders applicable to Plaintiff's industry and occupation. During the
 11 course of RENICK's employment, Defendants, and each of them, failed to compensate Plaintiff RENICK
 12 for overtime hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and
 13 double-time hours for hours worked in excess of twelve (12) hours per day, as required under the
 14 aforementioned labor regulations.

15 42. Beginning on or about 1997 for CLARK, and FEBRUARY 2000 for RENICK, pursuant to
 16 Labor Code §§ 200, 510, 1194, and 1198, and all IWC Wage Orders applicable to Plaintiff's industry and
 17 occupation, Defendants were required to compensate each Plaintiff with premium pay for all overtime work
 18 performed, for hours worked in excess of eight (8) per day and/or forty (40) hours per week and for the first
 19 eight (8) hours on the seventh (7th) consecutive day of any work week, and double time after twelve (12)
 20 hours in any single workday and/or after eight (8) hours on the seventh (7th) consecutive day of any work
 21 week.

22 43. At all times relevant herein, Labor Code § 1194(a) provided that an employee, in the position
 23 of CLARK and RENICK, who had not been paid overtime compensation could recover the unpaid balance
 24 of the full amount of overtime wages due, including interest thereon, together with reasonable attorney's
 25 fees and costs of suit.

26 44. Within the last four (4) years preceding the filing of this complaint, Defendants have employed
 27 Plaintiff CLARK as a Sr. Tech Analyst.

28 45. Within the last four (4) years preceding the filing of this complaint, Defendants have employed

Plaintiff RENICK as a Sr. Tech Analyst.

46. Throughout each Plaintiffs' respective employment, Defendants have failed and refused to pay and properly calculate overtime compensation to each Plaintiff as required by law.

47. As a direct and proximate result of Defendants' willful, knowing, and intentional failure to pay overtime wages, CLARK has suffered and continues to suffer wage losses in a sum according to proof.

48. As a direct and proximate result of Defendants' willful, knowing, and intentional failure to pay overtime wages, RENICK has suffered and continues to suffer wage losses in a sum according to proof.

49. Plaintiffs each individually, and collectively, has/have incurred and continue(s) to incur legal expenses and attorney's fees. Plaintiffs are entitled to legal expenses and attorney's fees pursuant to California Labor Code §1194(a), and related statutes, in sums according to proof.

SECOND CAUSE OF ACTION

(Waiting Time Penalties - Cal. Lab. Code §§ 203, 558 et seq. – Against All Defendants)

50. Plaintiffs reallege and incorporate by reference under this cause of action each and every allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

51. Plaintiff CLARK ceased being employed by Defendants, on or about JULY 15, 2005, whereby all monies owed must be paid, pursuant to statute (Labor Code §§201(a) and 227.3), to CLARK within the time prescribed by law.

52. To date, Plaintiff CLARK has still not been paid in full for, but not limited to: wages owed, overtime or double-time owed.

53. Plaintiff RENICK ceased being employed by Defendants, on or about APRIL 6, 2005, whereby all monies owed must be paid, pursuant to statute (Labor Code §§ 201(a) and 227.3), to RENICK within the time prescribed by law.

54. To date, Plaintiff RENICK has still not been paid in full for, but not limited to: wages owed, overtime or double-time owed.

55. Defendants have willfully failed to pay each Plaintiff all monies owed to each Plaintiff.

56. As a result of these failures to pay, each Plaintiff is individually entitled to waiting time penalties pursuant to Labor Code § 203, for a period of thirty (30) days.

57. Plaintiffs have each incurred, and continue to incur, legal expenses and attorney's fees. Plaintiffs are entitled to legal expenses and attorney's fees, pursuant to Labor Code §218.5, in a sum according to proof.

THIRD CAUSE OF ACTION

**(For Violation of Labor Code § 226 – Failure to Provide Accurate Itemized Statements
Against All Defendants)**

58. Plaintiffs reallege and incorporate by reference under this cause of action each and every allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

59. At all times relevant herein, Defendants violated Labor Code § 226, in that Defendants failed to properly and accurately itemize the number of hours worked by each Plaintiff at the effective regular rates of pay and the effective overtime rates of pay.

60. In a letter dated OCTOBER 27, 2007 and JANUARY 15, 2008 to JAMES BOUDREAU, demand was made by Plaintiffs for their employment records. Defendants having willfully failed to produce any of the requested records, as a legal and proximate result, Defendants are liable for penalties in sums to be calculated and imposed by the Court at the time of trial in this matter. Defendants and each of them are in violation of Labor Code § 226, and are thus liable jointly and severally as set forth below.

61. Defendants and each of them, knowingly and intentionally failed to comply with Labor Code § 226, causing damages to each individual Plaintiff. These damages, including but limited to costs expended calculating the true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiffs CLARK and RENICK, each individually, elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to the Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4000 for each plaintiff) plus reasonable attorney's fees and costs, plus a penalty of \$750.00 pursuant to Labor Code § 226(e)(f).

FOURTH CAUSE OF ACTION

**(Compensation For Required Rest Periods Not Provided – Lab. Code §§ 226.7 and
IWC Wage Orders – Against All Defendants)**

62. Plaintiffs reallege and incorporate by reference under this cause of action each and every allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

63. Pursuant to Labor Code § 226.7, and all IWC Wage Orders applicable to Plaintiff's industry and occupation, Defendants were required to authorize and permit employees, such as each Plaintiff herein, to take rest periods, based upon the total hours worked at a rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof, with no deduction from wages.

64. Defendants failed and refused to authorize and permit each Plaintiff to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof, in violation of Labor Code § 226.7, and all IWC Wage Orders applicable to Plaintiff's industry and occupation.

65. Defendants further violated Labor Code § 226.7, and all IWC Wage Orders applicable to Plaintiff's industry and occupation, by failing to pay each Plaintiff according to law, in amounts according to proof at the time of trial, which amounts remain owing and unpaid.

FIFTH CAUSE OF ACTION

**(For Unfair Competition In Violation of Unfair Business Practices- Business & Professions Code
§§ 17200 *et. seq.* – By Plaintiffs Acting Each Individually, and also For the Interests of the
General Public – Against All Defendants)**

66. Plaintiffs reallege and incorporate by reference under this cause of action each and every allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

67. Business & Professions Code §§ 17200-*et seq.* prohibits acts of unfair competition, which includes any “unlawful and unfair business practices.”

68. Defendants' and each of their conduct, as alleged herein, has been and continues to be unfair, unlawful, and deleterious to each Plaintiff herein, and to the general public. Plaintiffs hereby seek to

1021.5. Plaintiffs are each individually "persons" within the meaning of the Business & Professions Code

1 § 17204, and therefore each possesses standing to bring this suit for injunctive relief and restitution.

2 69. It is the policy of this State to enforce minimum labor standards, to ensure that employees are
3 not required or permitted to work under substandard and unlawful conditions, and to protect those
4 employers who comply with the law from losing competitive advantage to other employers who fail to
5 comply with labor standards and requirements.

6 70. Through the conduct alleged herein, Defendants acted contrary to these public policies and have
7 engaged in unlawful and/or unfair business practices in violation of Business & Professions Code
8 §§ 17200-*et. seq.*, depriving each Plaintiff herein, of the rights, benefits, and privileges guaranteed to
9 employees under California law.

10 71. Defendants, and each of them, regularly and routinely violated the following statutes and
11 regulations with respect to each Plaintiff herein,: all IWC Wage Orders applicable to Plaintiff's industry
12 and occupation, and Labor Code §§ 510 and 1194 (failure to pay overtime pay); Labor Code § 226 (failing
13 to provide accurate wage statements to employees at the time of payment); and/or Labor Code § 226.7 and
14 all IWC Wage Orders applicable to Plaintiff's industry and occupation (failure to provide rest and meal
15 periods).

16 72. By engaging in theses business practices, which are unfair business practices within the
17 meaning of Business & Professions Code §§ 17200-*et. seq.*, Defendants harmed each Plaintiff herein, and
18 thus by that design and plan gained an unfair competitive edge in the marketplace.

19 73. Under Business & Professions Code § 17203, Plaintiffs and each of them are entitled to obtain
20 restitution of these funds each on behalf of him/herself by Defendants' unfair business practices as
21 enumerated herein.

22 74. Pursuant to Business & Professions Code § 17203, injunctive relief is necessary to prevent
23 Defendants from continuing to engage in the unfair business practices as alleged herein. Plaintiffs are
24 informed and believe that Defendants, and persons acting in concert with them, have committed and will
25 continue to commit the above unlawful acts unless restrained or enjoined by this Court. Unless the relief
26 prayed for below is granted, a multiplicity of actions will result. Plaintiffs have no plain, speedy, or
27 adequate remedy at law, in that pecuniary compensation would not afford adequate and complete relief.
28 The above-described acts will cause great and irreparable damage to each Plaintiff herein, unless

Defendants are restrained from committing further illegal acts.

75. Each Plaintiff's success in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this complaint is necessary, as public agencies have only sought limited enforcement of those rights, if any. Plaintiffs, each individually and by and through counsel, have incurred and continue to incur a financial burden in pursuing this action on behalf of the general public. Plaintiffs further seek to enjoin the above-referenced unlawful actions under the Labor Code. Therefore, Plaintiffs seek an award of attorney's fees and costs of suit on this cause of action pursuant to Code of Civil Procedure § 1021.5 and other applicable Labor Code sections.

SIXTH CAUSE OF ACTION

(Failure to Pay Overtime and to Furnish Itemized Wage Statement)

Labor Code, Section 2699 - Against All Defendants)

76. Plaintiff realleges and incorporates by reference under this cause of action each and every allegation made in each and every paragraph hereinabove, as if fully set forth hereunder.

77. By the conduct described above, Defendants, and each of them, have failed to pay Plaintiffs overtime compensation as required by Section 510 of the California Labor Code and failed to furnish Plaintiffs with an itemized wage statement as required by Labor Code, Section 226(a)(2) and (9).

78. By reason of the above, Plaintiffs are entitled to a payment of a penalty of \$50 per pay period for each employee for the initial violation and \$100 per pay period for each employee for each subsequent violation, for the failure to furnish an itemized wage statement, up to a maximum of \$4,000 per employee, and Plaintiffs are entitled to a payment of \$50 per pay period for each employee for the initial violation and \$100 per pay period for each employee for each subsequent violation, for failure to pay overtime compensation.

79. Plaintiff has complied with the Notice requirements of Labor Code, Section 2699.3(a)(1), as set forth in paragraph 36 regarding a violation of Sections 226, 510 and 558 of the Labor Code, prior to

1 commencing this action.

2 80. Plaintiffs therefore have a private right of action against all defendants, both business and
 3 individual, pursuant to California Labor Code Section 558 (a).

4 **WHEREFORE**, Plaintiffs CLARK and RENICK, each individually, and collectively in this
 5 complaint, respectfully pray this Court enter judgment in favor of each of Plaintiff CLARK and Plaintiff
 6 RENICK, and against Defendants CHASE HOME FINANCE, CHASE MANHATTAN MORTGAGE,
 7 BOUDREAU, and such Defendants as may be added as "Doe" Defendants herein, and each of them, jointly
 8 and severally, individually and collectively, as follows:

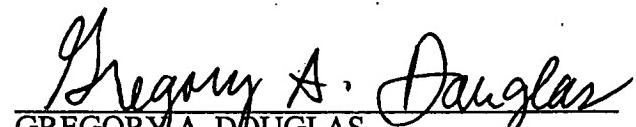
- 9 1. For back pay, front pay, and other Special Damages according to proof;
- 10 2. For general Damages as shall be shown at the time of trial;
- 11 3. For all statutory damages;
- 12 4. For restitution of all monies due to each of CLARK and RENICK, and disgorgement of profits
 from the unlawful business practices of Defendants, and each of them;
- 13 5. For pre-judgment and post-judgment interest on all damages awarded;
- 14 6. For all penalties imposed as stipulated by the California Labor Code; including waiting time
 penalties, pursuant to Labor Codes §§ 203 and 558.
- 15 7. For reasonable attorneys' fees, pursuant to Labor Code §§ 218.5, 2699. Code of Civil Procedure
 §1021.5, Business & Professions Code § 17200-*et seq.*, and according to any other attorney-fee statutes
 found by the Court to apply to the facts presented at trial;
- 16 8. For costs of suit incurred;
- 17 9. For compensation of one hour at the regular rate of pay for each rest period denied in violation
 of Labor Code § 226.7 and all IWC Wage Orders applicable to Plaintiff's industry and occupation,
 according to proof;
- 18 10. For a preliminary and permanent injunction ordering each and every Defendant to cease such
 unlawful and unfair practices as alleged herein above and proved to the Court at the time of trial, requiring
 the establishment of appropriate and effective means to prevent future violations;
- 19 11. For the imposition of a constructive trust in favor of each respective Plaintiff herein, and against
 Defendants, and each of them, and such appropriate preliminary injunction as the Court may order during

1 the period before a final judgment is entered in this matter, on such assets, monies and things, as either or
2 both of the respective Plaintiffs herein shall show the Court at the time of trial, or in the case of any
3 application for preliminary injunction, such assets, monies and things as either or both of the respective
4 Plaintiffs shall show the Court to exist at the time such *pendente lite* relief may be sought, AND

5 12. For such other and further relief as the Court deems just.

6
7
8 DATED: February 6, 2008

UNITED EMPLOYEES LAW GROUP, PC

9
10 
11 GREGORY A. DOUGLAS,
12 Attorney for Plaintiffs,
13 CHRISTOPHER CLARK and JAMES RENICK

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**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

148886 - SH

**March 18, 2008
11:46:56**

Civ Fil Non-Pris

USAO #: 08CV0500
Judge.: JEFFREY T MILLER
Amount.: \$350.00 CK
Check#: BC7828

Total-> \$350.00

**FROM: CLARK ET AL V: CHASE HOME
FINANCIAL LLC**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CHRISTOPHER CLARK and JAMES RENICK

DEFENDANTS

CHASE HOME FINANCE, LLC (on behalf of itself and as successor in interest to Chase Manhattan Mortgage Corporation) and JAMES BOUDREAU

08 MAR 18 AM 11:45

County of Residence of First Listed Plaintiff

(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Andrew R. Livingston (State Bar No. 148646)

DEPUTY

Erin M. Connell (State Bar No. 223355)

Orrick, Herrington & Sutcliffe LLP

405 Howard Street, San Francisco, California 94105-2669

(415) 773-5700

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)
Walter L. Haines (State Bar No. 71075)
United Employees Law Group, P.C.
65 Pine Avenue, #312
Long Beach, California 90802
(562) 256-1047**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 430 Commerce
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Deportation	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 500 Selective Service
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 520 Securities/Commodities Exchange
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 520 Appeals 28 USC 158	<input type="checkbox"/> 530 Customer Challenge 12 USC 3410
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 540 Other Statutory Actions
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 555 Immigration
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	PROPERTY RIGHTS	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 530 General	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 480 Consumer Credit
	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 490 Cable/Sat TV
			SOCIAL SECURITY	<input type="checkbox"/> 510 Motions to Vacate Sentence
			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 520 Appeals 28 USC 158
			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 530 Customer Challenge 12 USC 3410
			<input type="checkbox"/> 730 Labor/Mgmt.Reporting & Disclosure Act	<input type="checkbox"/> 540 Other Statutory Actions
			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 550 Civil Rights
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 555 Immigration
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 423 Withdrawal 28 USC 157
			FEDERAL TAX SUITS	
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened

Transferred from

 5 another district (specify) 6 Multidistrict Litigation

Appeal to District

 7 Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sections 1332(a) and 1441(a)

Brief description of cause:

Plaintiff and defendants are of diverse citizenship, and amount in controversy exceeds \$75,000.00.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

March 17, 2008

SIGNATURE OF ATTORNEY OF RECORD

Erin M. Connell

Erin Connell

FOR OFFICE USE ONLY

RECEIPT # 148860AMOUNT \$ 350

APPLYING IFFP

JUDGE

MAG. JUDGE

American LegalNet, Inc.
www.FormsWorkflow.com*CR 3/18/08*